

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's own motion into the programs,  
practices and policies related to implementation  
of the California Environmental Quality Act as it  
applies to jurisdictional telecommunications  
utilities

Rulemaking 00-02-003  
(Filed February 3, 2000)

**ASSIGNED COMMISSIONER'S RULING REQUESTING COMMENTS**

**Summary**

This ruling sets forth a proposal for an improved application of the California Environmental Quality Act (CEQA) to Commission proceedings relating to telecommunications. Specific and detailed comments are requested to allow us to refine this proposal.

The process described in this ruling has two fundamental goals. The first is to further improve the Commission's compliance with CEQA in the area of telecommunications. The second is to eliminate the unfair disparities among telecommunications providers created by the Commission's present CEQA processes. The process set forth below meets both of these goals. It does so by basing the environmental review for a project on the specific construction that is

proposed, subsequent to issuance of a Certificate of Public Convenience and Necessity (CPCN)<sup>1</sup>.

## **Background**

In California there is presently a significant disparity in the quality and quantity of the environmental review performed on telecommunications infrastructure construction. Some telecommunications providers have been authorized to build essentially anything, anywhere, without a discretionary decision from this Commission that would trigger a CEQA review.

Others, who received what was known as the “batch mitigated negative declaration,” have been authorized to build statewide, within existing utility rights-of-way, although there is some variation in the requirements imposed by the various batch negative declarations.<sup>2</sup> While the Commission stopped issuing batch negative declarations in late 1999 (see D.99-12-050), carriers holding them are still building facilities under their requirements. Other carriers, including many that obtained their CPCNs after late 1999, received individual and project-specific CEQA review.

This multiplicity of environmental standards is problematic both from a CEQA standpoint and from a competitive fairness standpoint. The CEQA review provided does not match the construction that is going on. A company building almost nothing may have received greater environmental review than a

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<sup>1</sup> The proposed process would not alter the process for obtaining a CPCN, including any environmental review necessary for obtaining a CPCN. The process proposed here would apply to all construction activity that occurs after the issuance of a CPCN, and that did not receive CEQA review in the CPCN application process.

<sup>2</sup> There is also some uncertainty as to the precise meaning of the term “right-of-way.”

company laying fiber statewide. Or two companies engaged in almost identical physical construction may be subject to very different environmental compliance regimes. This is neither a sound practice for protecting the environment nor for competitive fairness.

For example, under past Commission practice, all facilities-based CLECs received essentially the same level of environmental review (via the batch negative declaration), regardless of what they were planning to build. Such undifferentiated environmental review is not a good fit with CEQA, as some companies may receive less environmental review than warranted by their actual construction projects, while others may be burdened with more environmental scrutiny than needed.

### **The Solution**

Regardless of the approach we ultimately adopt in this proceeding, it must be applicable across the board, to all telecommunication providers. If our new approach applies only to CPCNs issued after a decision in this proceeding, we will only extend the regulatory hodge-podge, carrying forward all of the existing flaws and inequities, and adding yet another new layer to the regulatory sediment.

The solution is to tie our CEQA review to Commission approval of the actual construction (and accompanying environmental effects) that a particular telecommunications provider is planning to undertake, subsequent to their obtaining a CPCN. Accordingly, I intend to present the following proposal to the full Commission. This proposal would apply to all telecommunications

providers regulated by the Commission, regardless of the nature of their CPCN or its date of issuance.<sup>3</sup>

This approach provides a level playing field among all telecommunications carriers, and ensures that our CEQA review matches the actual construction that is proposed.

### **Other Approaches**

I have considered other approaches than the one proposed here. For example, one possibility would be to do a tiered system, roughly analogous to the approach taken for electric projects under our General Order (GO) 131-D. Under GO 131-D, electric transmission projects above 200 kV require the utility to obtain a CPCN from the Commission, projects between 50 kV and 200 kV require a simpler Permit to Construct, while projects under 50kV do not require Commission approval.

While I have borrowed aspects of GO 131-D for this proposal (such as its use of public notice and the permit-to-construct concept), its basic structure is less suitable for telecommunications than for electric transmission and distribution, as the physical size (and corresponding environmental impact) of telecommunications infrastructure does not vary the same way that electric infrastructure does.

Proxies for environmental impact, such as length of fiber laid, or other linear measurements, are not a good measure of environmental impact, as they ignore the nature of the environment through which the fiber passes. Similarly, categorizations based on the general nature of the environment have proved

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<sup>3</sup> This proposal would be embodied in a new General Order.

problematic as well, with registered cultural heritage sites being found in existing utility rights of way and urban roadways. Considering both aspects at an appropriate level of detail would require analysis not too different from a CEQA document, such as an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND).

Some parties may argue that for the Commission to develop a tiered approach applicable to telecommunications projects (e.g. some activities are exempt, some get standardized mitigations, some require specific environmental review), the Commission would need to prepare a program-level EIR.<sup>4</sup> A program-level review could have several benefits. It would provide a more complete review of potential effects (including cumulative impacts) and alternatives than an individual review of each carrier's construction activities, and could avoid some duplication of efforts that would occur under individual review of each carrier.

While this approach may have some merit, it does not appear to be appropriate for the current environment of rapidly changing technologies and markets. A program EIR would be quite complex, and would require a significant amount of time and effort to prepare; given the shifting context and complexity of the process, the end product may or may not ultimately prove to be useful. Such a lengthy approach of such uncertain value simply does not provide a prompt answer to the pressing problems facing both this Commission

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<sup>4</sup> According to the CEQA Guidelines, "A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project...." (14 CCR 15168(a)) Generally, these actions are related either geographically or as logical parts of a chain, but they could also be related "in connection with the issuance of rules or regulations governing the conduct of a continuing program,..." (14 CCR 15168(a)(3))

and the participants in California's rapidly changing telecommunications market. If there is strong and broad-based support expressed for a program EIR, the Commission may consider preparing one in the future, but it does not appear to be a feasible alternative at this time.

Another possible approach would be to essentially eliminate all discretionary review by the Commission of telecommunications infrastructure construction. This approach would level the playing field by equalizing environmental review at the lowest possible level, which is currently available only to the incumbent local exchange carriers. This approach would result in a radical decrease in our level of environmental review of telecommunications projects in California. Such an evisceration of environmental review is inconsistent with our obligations under CEQA.

## **The Process**

I propose that the Commission adopt a streamlined environmental review process for all telecommunications carriers. This process will be called the CEQA Expedited Treatment Process (ETP) for telecommunications. This process is designed to accommodate only construction projects that are exempt from CEQA review. Carriers should submit a proposal to Commission staff under the ETP for all construction activities they believe are exempt from CEQA. Any carrier who wishes to perform construction activity that is not exempt from CEQA must seek a permit to construct.<sup>5</sup>

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<sup>5</sup> Similar to GO 131-D for electric projects, the permit to construct process would consist primarily of the necessary review under CEQA. The Commission does not need to reexamine the financial or technical qualifications of the carrier, nor make a finding of need for the proposed project. Parties should comment on how they envision the process of obtaining a permit to construct.

Carriers can determine the scope of what they wish to include in their proposals under the ETP; one proposal may include more than one project, or a project that extends over a period of time.<sup>6</sup>

Before submitting a proposal to the Commission staff under the ETP, all carriers should perform a rigorous self-assessment to ensure that the process is appropriate for their proposed construction activity. The first step in that process is for carriers to consider whether any of the following conditions are present:

- a. there is reasonable possibility that the activity may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped and officially adopted pursuant to law by federal, state, or local agencies; or
- b. the cumulative impact of successive projects of the same type in the same place, over time, is significant; or
- c. there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. (CEQA Guideline 15300.2)

If any of these conditions are present, the ETP process is not appropriate, and a proposal for a permit to construct should be filed instead. If a proposal is submitted to staff under the ETP, and it is found that these conditions are present, the proposal will be rejected.

After that initial self-assessment, carriers shall submit an ETP proposal to the Commission's Energy Division<sup>7</sup>. Carriers are urged to prepare a thorough,

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<sup>6</sup> Carriers should not seek overly long-term approvals, as environmental conditions may change over time, rendering use of an exemption no longer appropriate. Similarly, proposals including too many different projects increase the risk of having the proposal rejected.

clear, complete, and accurate proposal. Given the short review time for the proposals, a high-quality proposal is more likely to be approved than one that is sloppy or incomplete.

A complete copy of the ETP proposal must be posted to the carrier's web site, in an easily findable location, no later than the day that the carrier submits its ETP proposal to the Energy Division.

The proposal shall contain the following:

- A detailed description of the proposed project, including:
  - The precise location of the proposed construction project
  - Regional and local site maps
  - Physical location of the customer(s) to be served, including street addresses.
- A description of the environmental setting, to include at a minimum:
  - General terrain and significant features
  - Cultural, historical, and paleontologic resources
  - Biological resources
  - Current land use and zoning
- A construction workplan, to include:
  - Pre-Construction Survey Checklist<sup>8</sup> – Archaeological Resources
  - Pre-Construction Survey Checklist – Biological Resources
  - A detailed schedule of construction activities, including site restoration activities
  - A description of construction/installation techniques, including equipment to be used

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<sup>7</sup> The Commission's CEQA review functions have been consolidated in Energy Division for all industries regulated by the Commission.

<sup>8</sup> Both Archeological and Biological Resource Checklists are attached as Appendix A.



- A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information
    - A list of permits required for the proposed project
  - A statement of the CEQA exemption(s) applicable to the proposed project, including citations to the CEQA Guidelines
  - Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable
  - Descriptions of all environmental research performed, and who that research was performed by, including contact information
  - Contact information for the carrier
  - A working link to the location on the carrier's web site of the complete copy of the proposal.
  - Proof of service of the following notices: service by e-mail (w/delivery receipt) or direct mail to the planning agency of the city and county where each activity is located; service by e-mail (w/delivery receipt) or direct mail to the land owner, if other than the carrier, on whose land the activity will occur; and publication in a newspaper of general circulation in the county where the activity will be located, no later than the date the proposal is tendered to the Energy Division. All such notices shall provide a clear description of the project, and shall include contact information for the carrier and for the Energy Division, and shall state the deadline for protesting the proposal.
  - Signature, under penalty of perjury, of an officer of the carrier
- Energy Division will review the proposal for the proposed project(s) to confirm that the claimed exemption(s) from CEQA are applicable, and will arrange for the link to the proposal to be posted to the Commission's web site
  - Within 7 days of receipt of an ETP proposal, Energy Division will provide "early bad news" if, upon initial review of proposal, there are obvious reasons why the proposal is not appropriate for the ETP process. Within 21 days from the date of Carrier's submittal Energy Division will issue either:

- A Notice to Proceed, and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research; or
  - A Letter of Denial stating the specific reasons why the project cannot be approved under the ETP, including an explanation of why any claimed CEQA exemption(s) are not applicable
  - Carrier shall not engage in any construction activity prior to receiving a Notice to Proceed.
- Protests must be submitted to Energy Division within 10 days of the date the link to the proposal appears on the Commission's web site. If a protest is submitted, at the end of the 21-day review period the Energy Division may approve the proposal, deny the proposal, or request one or more parties to provide additional information. If additional information is requested, Energy Division has 21 days from the date Energy Division receives all requested information to approve or deny the proposal.
- The carrier may remove the proposal from its web site, and the Commission may remove the link to the proposal from its web site, no sooner than 30 days after a Notice to Proceed and Notice of Exemption is issued by Energy Division, and no sooner than 10 days after a Notice of Denial is issued by Energy Division.

As described above, I intend to place a draft decision and General Order before my colleagues that incorporate this type of streamlined environmental review process for all telecommunications carriers. Detailed comments will be helpful in assessing both the policy approach and the implementation details.

**IT IS RULED that:**

1. Respondents shall file and serve comments on the proposal described in this ruling no later than May 12, 2006.
2. Interested parties may file and serve comments on the proposal described in this ruling no later than May 12, 2006.
3. Respondents and interested parties may file and serve replies to the comments on the proposal described in this ruling no later than May 19, 2006.

4. Anyone not currently on the service list for this proceeding who wishes to be added to the service list shall send a request via e-mail, no later than May 8, 2006, to the Commission's Process Office (ALJ Process@cpuc.ca.gov) and the assigned ALJ ([pva@cpuc.ca.gov](mailto:pva@cpuc.ca.gov)).

5. All parties should follow the electronic service protocols set forth in Rule 2.3.1.

Dated April 26, 2006, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown  
Assigned Commissioner

**APPENDIX A**

**California Public Utilities Commission**

**Preconstruction Survey Checklist – Archaeological Resources**

Date: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Utility ID: \_\_\_\_\_

Location (Address, Provide Map): \_\_\_\_\_

Route Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Area Description:

- ☐ Urban
- ☐ Suburban
- ☐ Rural

Photo Documentation: ☐ Yes ☐ No

Substrate:

- ☐ Asphalt/Concrete
- ☐ Soil
- ☐ Other: \_\_\_\_\_

Archaeological Resources:

- ☐ Yes ☐ No CHRIS Records Search
- ☐ Yes ☐ No Request NAHC contact list and query Sacred Lands File
- ☐ Yes ☐ No Contact Parties on the NAHC list by letter and phone (identify concerns and sites)
- ☐ Yes ☐ No Site visit/survey (identify architectural, historic, and prehistoric resources)

Notes and Recommendations: \_\_\_\_\_  
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**California Public Utilities Commission**

**Preconstruction Survey Checklist – Biological Resources**

Date: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Utility ID: \_\_\_\_\_

Location (Address, Provide Map): \_\_\_\_\_

Route Description: \_\_\_\_\_

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Area Description:

- ☐ Urban
- ☐ Suburban
- ☐ Rural

Photo Documentation: ☐ Yes ☐ No

Substrate:

- ☐ Asphalt/Concrete
- ☐ Soil
- ☐ Other: \_\_\_\_\_

Biological Resources:

CNDDDB Search	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Raptors Present	<input type="checkbox"/> Yes	<input type="checkbox"/> No
T&E Species Present	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Burrows	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Riparian Vegetation (List Spp)	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
Tree Removal Needed?	<input type="checkbox"/> Yes	<input type="checkbox"/> No			
Nests Present (birds present? Spp)	<input type="checkbox"/> Yes	<input type="checkbox"/> No			

Notes: \_\_\_\_\_

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Consultation Required? ☐ Yes ☐ No (If yes why?) \_\_\_\_\_

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Water Resources and Wetlands:

Drainages Present	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Wetlands Present	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Lake or Pond	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Delineation Required	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Notes: \_\_\_\_\_

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Permits Required:

USACE	<input type="checkbox"/> Yes	<input type="checkbox"/> No	NMFS	<input type="checkbox"/> Yes	<input type="checkbox"/> No
RWQCB	<input type="checkbox"/> Yes	<input type="checkbox"/> No	USFWS	<input type="checkbox"/> Yes	<input type="checkbox"/> No
CDFG	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Regional Air Quality	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State Lands Commission	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Local Counties and Cities	<input type="checkbox"/> Yes	<input type="checkbox"/> No

R.00-02-003 GFB/eap



**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's Ruling Requesting Comments on all parties of record in this proceeding or their attorneys of record.

Dated April 26, 2006, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.